

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2000-982

January 30, 2001

BANGOR GAS COMPANY LLC,  
Request for Exemption Pursuant  
To 35-A M.R.S.A. §708(2)(a)

ORDER

WELCH, Chairman; NUGENT and DIAMOND; Commissioners

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**I. SUMMARY**

We deny Bangor Gas Company LLC's (Bangor Gas) request for an exemption but approve its proposed reorganization. This approval should not be construed to modify our reservation of issues for later resolution as described in our recent approval of the sale of Bangor Hydro-Electric Company's interest in Bangor Gas to Sempra. See Bangor Hydro-Electric Company & Bangor Gas Company, LLC, Joint Petition for Approval of Reorganization in Connection with the Sale of Penobscot Natural Gas Company, Inc., Docket No. 2000-251, Order (June 6, 2000).

**II. PROCEDURAL HISTORY AND BACKGROUND**

On December 7, 2000, Bangor Gas filed a request for an exemption from the approval requirements of 35-A M.R.S.A. §708 for a proposed merger of two Sempra Energy (Sempra) subsidiaries, Bangor Pacific Corporation (Bangor Pacific), a California corporation, and Penobscot Natural Gas Company, Inc. (Penobscot), a Maine corporation. Together these subsidiaries wholly own Bangor Gas, a local distribution company serving only in Maine.

In addition to the request, the filing contains the supporting affidavit of Rodger R. Schwecke, General Manager and Vice President of Operations for Bangor Gas, and the unexecuted resolutions of the Boards of Directors of Penobscot and Bangor Pacific authorizing the corporate officers to carry out the merger.<sup>1</sup>

In 1998, the Commission approved the creation of Bangor Gas Company, LLC, as a joint venture between Pacific Enterprises and Bangor Hydro-Electric Company (BHE) through their respective subsidiaries, Bangor Pacific and Penobscot, which were

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<sup>1</sup> The merger agreement governing this transaction was not provided. Consequently, we base our approval of this transaction on the representations and descriptions of it made by the Company and its counsel in the application.

created for this purpose.<sup>2</sup> See Bangor Hydro Electric Company, Petition for Affiliated and Reorganization Approval Needed in Connection with Bangor Gas Company Transaction, Docket No. 97-796, Order Rejecting Stipulation and Approving Second Revised Stipulation (Mar. 26, 1998). Two years later, the Commission approved the sale by BHE of Penobscot's stock to Sempra, reserving the determination as to what, if any, impact the transaction would have on Bangor Gas's books. See Bangor Hydro-Electric Company & Bangor Gas Company, LLC, Joint Petition for Approval of Reorganization in Connection with the Sale of Penobscot Natural Gas Company, Inc., Docket No. 2000-251, Order (June 6, 2000).

On January 17, 2001, the Hearing Examiner issued a Notice of Proceeding and Proposed Order to the service list in Docket No. 2000-251. No comments or exceptions were filed.

### **III. LEGAL STANDARDS**

Public utilities are required to obtain Commission approval for any reorganization, including the merger or dissolution of an affiliated interest as defined in 35-A M.R.S.A. § 707, accomplished by the exchange, distribution, or transfer of voting securities or property, unless exempted by rule or order. 35-A M.R.S.A. §§708(1)(A) and 708(2)(A). The statute provides that the applicant must establish that the reorganization is consistent with the interests of the utility's ratepayers and investors and that the Commission shall impose conditions or requirements necessary to protect the interests of ratepayers. 35-A M.R.S.A. §708(2)(A). Section 708(3) allows the Commission to exempt, by general rule, certain classes of transactions from the approval requirements.

### **IV. ANALYSIS AND DECISION**

Bangor Gas argues that, while technically a reorganization under Maine law, this transaction "falls within the class of transactions that should be subject to exemption" from the approval requirements of section 708(2). Bangor Gas notes that, by Order in Docket No. 97-795, the Commission granted limited exemptions for certain reorganizations, such as those which would not result in an accounting entry on Bangor Gas's books. Bangor Gas states that an exemption will save the Company regulatory costs and will promote regulatory efficiency. Bangor Gas seeks an exemption for this transaction on the following bases:

- the Commission's approval of the sale of Penobscot stock to Sempra in Docket No. 2000-251 already sanctioned Sempra's 100% ownership of Bangor Gas and that ownership is not modified by this transaction;

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<sup>2</sup> At that time, Pacific Enterprises was a California-based holding company whose principal subsidiary was Southern California Gas Company. Pacific Enterprises merged with Enova Corporation to become Bangor Gas's present corporate parent, Sempra Energy.

- the merger does not involve unrelated entities, but amounts to one corporation's internal structure change, and the involved entities are "non-jurisdictional," i.e. not public utilities;
- the combination of these subsidiaries into a single holding company is structurally and operationally efficient, will have no impact on rates or rate plans, and will not affect the management and operation of Bangor Gas or the degree of local control; and
- the transaction raises no additional affiliated interest issues and the surviving entity will be subject to the same regulatory conditions and oversight as are Penobscot and Bangor Pacific.

We do not agree with Bangor Gas that this transaction merits exemption from the approval requirements of 35-A M.R.S.A. § 708, or do we believe that it falls within the limited exemptions we granted in Docket No. 97-795. In that Order, we granted an exemption to reorganizations undertaken by Pacific Enterprise affiliates that do not involve Bangor Gas. We further stated that this exemption did not apply to any reorganization that involves an affiliate that is likely to enter into a transaction or arrangement with Bangor Gas.

The proposed transaction involves affiliates of Bangor Gas, which bear a direct relationship to the utility in the corporate chain. As a general matter, transactions involving such proximate affiliates could have important consequences for the utility subsidiary. Thus, we do not find that this transaction falls within a class of transactions that should be subject to exemption from the approval requirements of section 708.

We are also not persuaded that regulatory efficiency otherwise warrants an exemption for this particular transaction. Our review process for this transaction need not be protracted. Staff has employed a summary process, issuing a Proposed Order to the service list in the prior proceeding, Docket No. 2000-251, to notify and allow for comments from those entities likely to be concerned with this transaction. This is the same as, or similar to, the process that we would employ to grant an exemption.

After reviewing this transaction on its merits, we agree with Bangor Gas that the merger of these subsidiaries provides an opportunity for organizational and operational efficiency gains that is clearly in the interest of the utility's ratepayers and investors. Furthermore, based on the Company's representations, there does not appear to be any adverse impact on Bangor Gas's investors or its ratepayers. Bangor Gas represents that this transaction will not impact the management, operation, or regulation of Bangor Gas, nor will it result in an accounting entry on Bangor Gas's books.

In Docket No. 2000-251, we explicitly reserved the question of how the acquisition price and BHE's and Sempra's development costs would be booked to Bangor Gas, noting the impact those entries could have on rates at the conclusion of the rate plan. We approved the parties' agreement that no accounting entries relating

to the acquisition will be made until and unless we authorize those entries. Order at 6, 8. The stipulation also specifies that Bangor Gas may, by filing a formal request no later than June 1, 2001, seek Commission approval of its proposed accounting treatment of such investments in Bangor Gas.

The proposed merger should not be construed as modifying or circumventing the conditions and requirements expressed in our Order in Docket No. 2000-251, or the stipulation approved thereby. Consequently, we approve the transaction on that basis.

Dated at Augusta, Maine, this 30th day of January, 2001.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
   Nugent  
   Diamond

### NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.